



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,651	09/29/2003	Pekka T. Soininen	ASMMC.051AUS	4807

20995 7590 12/05/2005

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

BUSHEY, CHARLES S

ART UNIT	PAPER NUMBER
----------	--------------

1724

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,651

Applicant(s)

SOININEN, PEKKA T.

Examiner

Scott Bushey

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,15,16,33,34 and 43-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,15,16,33,34 and 43-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/03, 5/04, 8/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species C, as depicted by Figure 6 of the application in the reply filed on September 30, 2005 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 15, 16, 33, 34, and 44-46 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Macey (Fig. 1; page 2, lines 33-62).

Applicant should note that with respect to the pore sizes as recited by instant claim 16, the openings within the gas feed tube of the reference are fully adjustable from fully opened to fully closed and therefore the reference is capable of providing the operational parameters as set forth by the claim.

With respect to the materials worked on by the apparatus, the claim language is sufficiently broad in this aspect to read on the materials acted on by the reference. However, even if applicant were to amend the claims to more specifically recite materials worked on that were not envisaged by the reference disclosure, such would still not render the claims patentable, so long as the reference were capable of operating on the claimed materials. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the

Art Unit: 1724

prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

4. Claims 1, 15, 16, 33, 34, 43-46, and 49 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Utigard et al (Fig. 4; col. 7, lines 22, 26-39; col. 8, lines 4-11, 54-55).

Applicant should note that Fig. 4 of the reference clearly illustrates more than 50% of the porous gas delivery surface of the porous feed tube is above the surface of the liquid bath, thus meeting instant claim 16. Furthermore, the porosity of the porous feed tube is uniform over its entire porous delivery surface and thus the microporous element reference would meet the limitations as set forth by instant claim 49.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Utigard et al.

Utigard et al (Fig. 4; col. 7, lines 22, 26-39; col. 8, lines 4-11, 54-55) substantially discloses applicant's invention as recited by instant claims 47 and 48, except for the specific porosity requirements thereof. The reference does clearly teach a microporous element for feeding gas into a liquid bath and the overlying gas atmosphere simultaneously. It would have been obvious for an artisan at the time of the invention,

Art Unit: 1724

to provide the porous element of Utigard et al with any desired percentage of porosity, the percentage being the obvious result of routine experimentation, wherein the ultimate percentage chosen would have been dictated by the desired results of the phase contacting process to be practiced with the apparatus.

Conclusion

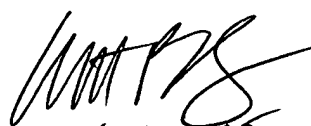
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is 571 272-1153. The examiner can normally be reached on M-Th 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott Bushey
Primary Examiner
Art Unit 1724



11-30-05